IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-300

THOMAS L. ANDREWS,

Petitioner,

V.

LOUISVILLE & NASHVILLE RAILROAD CO., and SEABOARD COASTLINE RAILROAD CO., as Lessees of the Properties known as THE GEORGIA RAILROAD,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

JURISDICTION

The statement by Petitioner for Writ of Certiorari of the opinions below and ground upon which the jurisdiction of the Court is invoked is accepted by Respondents. The decision of the United States Court of Appeals for the Fifth Circuit has been reported and appears in 441 Fed.2d. 1222.

STATUTES INVOLVED

Title 45, Sec. 152, First U.S.C.A.
Title 45, Sec. 153, First (i) U.S.C.A.
Title 45, Sec. 153, First (q) U.S.C.A.*
Title 45, Sec. 153, Second U.S.C.A.*

*as amended June 20, 1966. Pub.L. 89-456, §§ 1, 2; 80 Stat. 208, 209.

QUESTION PRESENTED

STATEMENT OF THE CASE

The statement by Petitioner for Writ of Certiorari of the question presented for review and his statement of the case are accepted by Respondents.

ARGUMENT

The decision of the United States Court of Appeals for the Fifth Circuit which is complained of is based on principles established in prior decisions of this Court, and the exact question has been anticipated by this Court with the appropriate answer clearly implied.

In the case of *Republic Steel Corporation vs. Charlie Maddox*, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d. 580, this Court held that federal labor policy requires that an employee must resort to grievance procedures under his employment contract before he could bring suit for severance pay.

The Court said:

> "As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and union as the mode of redress."
>
> "A contrary rule which would permit an indi-

vidual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation would 'inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.' "

In the Maddox case, supra, the contract was subject to the Labor Management Relations Act and not the Railway Labor Act.

Under the Railway Labor Act, and prior to the Maddox decision, the Supreme Court had held that a trainman was not required by the Railway Labor Act to exhaust the administrative remedies granted him by the Act before bringing suit for wrongful discharge, provided the state courts recognized such a claim. *Moore vs. Illinois Central Railroad Co.*, 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089 (1941), and *Transcontinental & Western Air, Inc. vs. Koppal*, 345 U.S. 653, 73 S.Ct. 906, 97 L.Ed. 1325 (1953).

But, in the Maddox case, the Supreme Court said:

"Federal jurisdiction in both Moore and Koppal was based on diversity; federal law was not thought to apply merely by reason of the fact that the collective bargaining agreements were subject to the Railway Labor Act. Since that time the Court has made it clear that substantive federal law applies to suits on collective bargaining agreements covered by Section 204 of the Railway Labor Act."

"Thus a major underpinning for the continued

validity of the Moore case in the field of the Railway Labor Act, and more importantly in the present context, for the extension of its rationale to suits under Section 301(a) of the LMRA has been removed."

In his dissenting opinion, Justice Black said:

"The Court recognizes the relevance of Moore and Koppal and, while declining expressly to overrule them in this case, has raised the overruling axe so high that its falling is just about as certain as the changing of the seasons."

In the case of *Roy Walker vs. Southern Railway Co.*, 385 U.S. 196, 87 S.Ct. 365, 17 L.Ed.2d. 294, this Court took a further look at *Moore vs. Illinois Central Railroad Co.*, supra, and *Transcontinental & Western Air, Inc. vs. Koppal*, supra, and posed to itself, "whether those decisions should be overruled in light of Maddox."

The Court reiterated the rule in Maddox and stated that a discharge grievance was not a matter of voluntary agreement under the Railway Labor Act; that the parties were compelled to arbitrate their dispute before the National Railroad Adjustment Board established under the Act.

But the Court stated that at the time of the railroad employee's discharge in that case, there was considerable dissatisfaction with the operations of the National Railroad Adjustment Board and with some of the statutory features. The Court pointed out that railroad employees had had to wait as long as ten (10) years for a decision on their complaint.

The Court then said:

"In consequence, Congress enacted Public Law 89-456, 80 Stat. 208, effective June 20, 1966, which

> drastically revises the procedures in order to remedy the defects. Of course, the new procedures were not available to petitioner, and his case is governed by *Moore*, *Slocum*, and *Koppal*. The contrast between the administrative remedy before us in *Maddox* and that available to petitioner persuades us that we would not overrule those decisions in his case."

In the case at bar, there is no contention that the plaintiff here could not enjoy all the benefits of the 1966 amendments. Under such amendments, special boards of adjustment are provided for and an agreement establishing such a board must be made within thirty (30) days from the date a request for one is made. Title 45, Section 153, Second, U.S.C.A. Under the new amendments, a provision is made for judicial review of a board decision if an employee loses. Title 45, Section 153, First (q), U.S.C.A.

The Circuit Court rightly stated that such amendments "significantly accelerated the procedures for obtaining action by and relief from the National Railroad Adjustment Board and provided for the first time entree directly to the District Courts of the United States for employees not prevailing before the Board."

We submit that federal labor law on the precise question submitted to the Court of Appeals is well settled and no further decision is needed.

Petitioner cites the case of *U. S. Bulk Carriers vs. Arguelles*, 400 U.S. 351, 91 S.Ct. 409, 27 L.Ed.2d. 456, decided by this Court on January 13, 1971. This was a seaman's case in which he had a statutory right to bring a claim for wages in addition to the grievance procedures under his collective bargaining agreement.

The United States Court of Appeals for the Ninth

Circuit has considered the same question posed in this case in the light of Maddox, supra. In the case of *Richard E. Sullivan vs. Pacific and Arctic Railway and Navigation Company*, 430 Fed.2d. 267 (1971), the Court held that exhaustion of administrative remedies was necessary before an action could be brought for wrongful discharge. The Court did not decide the case on the question of whether or not the 1966 amendments to the Railway Labor Act corrected the deficiencies pointed out by this Court in the case of *Walker vs. Southern Railway*, supra. It held that the employee in question was precluded by the Railway Labor Act from bringing an action at law for wrongful discharge because he did not exhaust his remedies under the collective bargaining agreement. The Court did, nonetheless, examine the 1966 amendments and in a footnote to the decision concluded that Public Law 89-456 effectively corrected the defects.

CONCLUSION

For the reasons stated above, Respondents say that a petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have on the day below written served counsel for Petitioner with the within and foregoing Brief for Respondents in Opposition to Petition for Writ of Certiorari by placing in the United States mail three (3) copies of same in a properly addressed envelope with adequate postage thereon addressed to James Edward Slaton, 307 Southern Finance Building, Augusta, Georgia 30902.

The day of , 1971.

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